

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KRISTY BERGEN)	
Claimant)	
VS.)	
)	Docket No. 259,963
GEARY COUNTY HEALTH DEPARTMENT)	
Respondent)	
AND)	
)	
KANSAS WORKERS RISK COOP FOR COUNTIES)	
Insurance Carrier)	

ORDER

Claimant appeals the February 20, 2001, Order of Administrative Law Judge Bryce D. Benedict. Claimant was denied benefits after the Administrative Law Judge found claimant had not established that, to her occupation, trade or employment, there was attached a particular and peculiar hazard of the disease aseptic meningitis, which distinguishes claimant's employment from other occupations and employments, and which creates a greater hazard of such disease in excess of the hazard of this disease in the general public. This finding begs the question whether claimant suffered accidental injury or occupational disease which arose out of in the course of her employment with respondent. That is the only issue for the Board's consideration.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds that the Order of the Administrative Law Judge should be reversed and benefits should be granted to claimant for the aseptic meningitis contracted during claimant's nursing activities for Geary County Health Department.

In claimant's capacity as a registered nurse for the Geary County Health Department, claimant came in contact with a greater-than-average population of preschool children. Claimant's job duties required that she visit the homes of young mothers on a daily basis. Claimant daily came into physical contact with both those mothers and their small children, doing such things as shaking hands and showing mothers how to change diapers and care for children. Claimant had routine physical contact daily with sick children.

Claimant contracted aseptic meningitis during her duties as a nurse for respondent.

Substantial medical information was placed into the record at the preliminary hearing before the Administrative Law Judge. The most persuasive opinion was that of Daniel R. Hinthorn, M.D., Professor of Medicine, Pediatrics and Family Medicine at the University of Kansas Medical Center. Dr. Hinthorn understood claimant's activities required that she come into contact with many young children on a regular basis. He opined that children under the age of five have the highest incidence of carrying viruses which commonly cause this type of condition. He noted that, although the viruses at times will cause only respiratory or flu-like symptoms, some unfortunate persons develop more serious illnesses such as aseptic meningitis. In his opinion, he felt it probable that the claimant acquired the agent which caused her aseptic meningitis during the course of her work activities.

Dr. Hinthorn acknowledged that his examination was unable to pinpoint which virus was responsible, but also acknowledged that his opinion was consistent with the studies reported in the literature on these diseases.

Based upon the evidence presented, the Board finds claimant has, for preliminary hearing purposes, proven that her current condition arose out of and in the course of her employment with respondent. The Board concludes that claimant's employment creates a greater hazard of her being infected with aseptic meningitis than is found in the general public.

As is always the case, this finding is not binding upon the parties in a full hearing on the claim, but is subject to a full presentation of the facts.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated February 20, 2001, should be, and is hereby, reversed, as claimant has proven that her aseptic meningitis resulted from contact with small children associated with claimant's employment with the Geary County Health Department.

IT IS SO ORDERED.

Dated this ____ day of May 2001.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Jeffery R. Brewer, Wichita, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director